

Rule 31. Depositions Upon Written Questions.

(a) Serving Questions; Notice. (1) Any party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(2) A party must obtain leave of court if the person to be examined is confined in prison or if, without the written stipulation of the parties, a plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery, or if special notice is given as provided in Rule 30(b)(2).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e) and (f) to take the testimony of the witness in response to the questions and to prepare, certify and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Copies; Notice of Filing. The party causing the deposition to be taken shall furnish one copy of the deposition to any opposing party, or if there is more than one opposing party, a copy may be filed with the clerk for the use of all opposing parties, and the party filing the deposition shall give prompt notice of its filing to all other parties.

Reporter's Notes to Rule 31: - 1. Rule 31 is identical to FRCP 31 and is a revised version of superseded Ark. Stat. Ann. 28-353(1)(a) through (c) (Repl. 1962). Deleted from the Federal Rule by the 1970 amendments thereto was former section (d) which was a part of this superseded statute. That section provided that the court could make such orders as were necessary for the protection of the parties, including the right to require that the deposition be

taken upon oral examination. This provision is not retained in Rule 31 in light of Rule 26(c) which provides that the Court may order that one discovery device be used in place of another.

2. The time limits prescribed in Section (a) are taken from the Federal Rule. Superseded Ark. Stat. Ann. 28-353(1)(a) (Repl. 1962) was patterned [after] the Federal Rule insofar as time limits are concerned as it existed prior to the 1970 amendments. Overall, this rule should have little effect upon Arkansas practice.

Additions to Reporter's Notes, 1984 Amendments: - Rule 31(c) is amended to make it consistent with the amendment to Rule 5(c) making filing of discovery documents optional. The same means of giving access to upon written questions as are found in the amended Rule 30 with respect to depositions upon oral examination are provided in the amendment.

Addition to Reporter's Notes, 1997 Amendment: - Subdivision (a) has been divided into four numbered paragraphs. The first two paragraphs make the rule consistent with Rule 30 as to the circumstances under which leave of court is required. Paragraph (3) is the former second paragraph, without substantive change. Paragraph (4) is the former third paragraph, but the total time for developing cross-examination, redirect, and recross questions is reduced from 50 days to 28 days.

History Text:

History. Amended July 9, 1984; effective September 1, 1984; amended November 18, 1996, effective March 1, 1997

Associated Court Rules:

Rules of Civil Procedure

Group Title:

V. Depositions and Discovery

Source URL: <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-31-depositions-upon-written-questions>